

**ARKANSAS STATE BOARD OF PHARMACY**  
**101 East Capitol, Suite 218**  
**Little Rock, AR 72201**

The Arkansas State Board of Pharmacy met for a regular scheduled meeting on October 14-15, 2003. The meeting was held at the Board of Pharmacy office, 101 East Capitol, Suite 218, Little Rock, Arkansas.

**Tuesday October 14, 2003**

The meeting was called to order by Lenora Newsome, P.D., President. Members present were Larry Autry, P.D.; Buddy Bowden, P.D.; Sharon Capps, RN; Bob Dufour, P.D.; Ross Holiman, B.S., H.Ed.; Larry McGinnis, Pharm.D.; and Ronnie Norris, P.D. Staff members present were Charles Campbell, Pharm.D., Executive Director; Trey Gardner, Pharm.D., Assistant Director; Margaret Lincourt, Chief Fiscal Officer; Lana Broyles, Administrative Assistant; Ron Ewing, P.D.; Rusty McSpadden, P.D.; and Jim Myatt, P.D.

**BOARD ACTION:**

Mr. Holiman made the motion that the minutes of the June 2003 Board Meeting be approved as presented. Dr. Norris seconded the motion. The vote for the motion was unanimous.

**BOARD ACTION:**

Ms. Capps made the motion that the agency financial report be approved as presented. Dr. Norris seconded the motion. The vote for the motion was unanimous.

The Board interviewed candidates for Reciprocity. Each applicant was asked the following three questions: 1) "Why are you seeking licensure in Arkansas?" 2) "Have you ever been before a licensing board for disciplinary action?" 3) "Do you, or have you ever had a problem with drugs or alcohol?" The following candidates were present:

Nita Allison	Jarrett Amsden	Tracy Atherton
Katheryn Balasco	Samuel Brock	Timothy Fancher
Cynthia Godfrey	Beth Hagedorn	Nhan Hoang
James Horde	Jaymie Landreth	Stephen Madden
Lori Meyer	Craig Miklasiewicz	Cheryl Mink
Joseph Muha	Larry Niederkohr	Luke Nigliazzo
Tommy Phillips	Chad Register	Mary Anne Shilkitus
Michael Sieg	Maria Torres	David Tucker
Kristi Van Etten	Robert Wamble	David Wixted
Jennifer Woodard	Catherine Zimmerman	

During the interview, it was determined that Beth Hagedorn and Catherine Zimmerman were employed by out-of-state pharmacies whose practices may be inconsistent with Arkansas law.

The Board instructed Dr. Gardner to speak to Dr. Hagedorn and Dr. Zimmerman in private and make a recommendation regarding their licensure to the Board.

**BOARD ACTION:**

Dr. McGinnis made the motion to approve the above applicants for reciprocity licensure in Arkansas except Beth Hagedorn and Catherine Zimmerman. Dr. Norris seconded the motion. The vote for the motion was unanimous.

Dr. Campbell explained, in detail, the Arkansas continuing education (CE) requirements to the reciprocity applicants. He told them that since they obtained an Arkansas pharmacist license so close to the end of the renewal year, they were responsible for meeting their CE requirements from the state in which they reciprocated from should they be audited by the Arkansas State Board of Pharmacy for the 2002-2003 calendar years.

A Public Hearing on Regulations was called to order at 9:00 a.m., as published.

**Regulation 07-02 – Compounding**

The proposed changes to this regulation will establish parameters for the compounding of commercially available products, define low, medium, and high-risk sterile products, require sterility, pyrogen, and potency testing on certain high-risk sterile products, and prohibit compounding for veterinary office stock – except for products used in emergency situations.

Public Comments made by:

Dana Woods, P.D., spoke to the board of behalf of the Arkansas Pharmacists Association (APA). He said that APA would encourage the Board to avoid enacting regulations more stringent than federal standards and laws. He said he does agree that the testing of compounded sterile products is essential. He said the emphasis should be on process validation, with testing being a part of that. Dr. Woods recommended the Board table the issue and allow APA to be part of the committee that would rewrite the regulation.

L.D. King, Director of International Academy of Compounding Pharmacists spoke to the Board regarding the regulation. He said his agency's mission is to protect, promote, and advance pharmacy compounding. He said that validation is absolutely essential. He recommended that the Board table the regulation until it could be rewritten. He said he would be glad to work with the Board and help rewrite the regulation.

Lee Shinabery, P.D., spoke against the wording of the Compounding Regulation. He said he served on the committee that developed the regulation, but now there is a team put together that could write a useable law. He said compounding should be preserved for pharmacists.

Garry Enderlin, P.D., spoke to the Board in favor of the high-risk testing of sterile products for administration by injection prepared in groups of more than 25 identical individual dose packages.

Rodney Baker, Director of Government Affairs – Farm Bureau, voiced his concerns about the impact the compounding regulation for veterinary office stock would have on agriculture.

Jim Akorn, a veterinarian from Pine Bluff, spoke against the regulation taking effect at this time.

Chad Marvin, immediate past president of the Arkansas Veterinarian Medical Association, told the Board that if he is not allowed to have compounded office stock it will compromise his patients.

**BOARD ACTION:**

Dr. Dufour made the motion to approve the amendment to Regulation 07-02 as presented. Dr. McGinnis seconded the motion. The vote for the motion was unanimous.

**BOARD ACTION:**

Dr. Dufour made the motion to establish a committee, with Larry McGinnis as chairman, to review the compounding regulation as promulgated and bring their findings to the February 2004 Board meeting. Dr. Autry seconded the motion. The vote for the motion was unanimous.

Dr. Gardner informed the Board that he spoke with both Dr. Hagedorn and Dr. Zimmerman. Dr. Gardner recommended the Board issue Dr. Zimmerman and Dr. Hagedorn an Arkansas pharmacist license. He said that the pharmacy at which Dr. Zimmerman is employed ships “lifestyle” drugs along with other medications; however, they do not ship the “lifestyle” drugs to patients in Arkansas. Dr. Gardner said he informed Dr. Zimmerman that the Arkansas State Board of Pharmacy would monitor her pharmacy’s website and if violations occurred the pharmacy and her Arkansas pharmacist license would have charges filed against them. Dr. Gardner said that the pharmacy at which Dr. Hagedorn is employed contracts with physicians. He said the pharmacy has submitted an application, but that it will not be approved until he receives further information; however, he feels that it should not affect Dr. Hagedorn receiving an Arkansas pharmacist license.

**BOARD ACTION:**

Mr. Holiman made the motion to approve Beth Hagedorn and Catherine Zimmerman for reciprocity licensure in Arkansas. Dr. Autry seconded the motion. The vote for the motion was unanimous.

**Matthew Paden, P.D., #7904; Rana Rakab, Pharm.D., #9734; Jonell Hastings, #88587; and Walgreens Pharmacy #5993, #AR-20257** appeared before the Board in answer to an Order and Notice of Hearing. The allegations in this case were that Dr. Rakab dispensed a new prescription with an error in the dosage instructions and did not counsel. Dr. Newsome called the meeting to order and turned the proceedings over to the Hearing Officer, Charlie Moulton. Tom Gay, of the Attorney General’s Office, represented the Board staff and Dewayne Pinion represented the respondents.

Mr. Gay told the Board that references to Jonell Hastings in the Order and Notice of Hearing should be dismissed, and that the respondents stipulated the allegations.

Mr. Pinion called Rana Rakab to testify. Dr. Rakab told the Board that she verified a prescription, filled by a technician, by computing the volume in her head. She did not verify the dosage instructions, which turned out to be incorrect. She said she made a terrible mistake and was very sorry. Dr. Rakab said that she depends heavily on her technicians to tell her when a patient picks up a new prescription and needs to be counseled, and she was not told when this prescription was picked up so she did not counsel anyone regarding this new prescription. Dr. Rakab told the Board that since the incident happened she verifies the entire prescription. She also said she has taken verification training and has obtained continuing education regarding prescription errors.

Matthew Paden, pharmacist in charge, testified regarding Walgreens' procedures on counseling. Dr. Paden told the Board that all of the pharmacists at his pharmacy, including him, are going back through the verification training process.

Kara Smith, district manager of Walgreens, also testified in this hearing.

**BOARD ACTION:**

Dr. Norris made the motion that in the matter of Matthew Paden, P.D., #7904; Rana Rakab, Pharm.D., #9734; and Walgreens Pharmacy #5993, #AR-20257, allegations A-1, A-2, A-3, A-4, A-5, A-6, A-7, and A-8 were found to be true, and charges C-1, C-2, C-3, C-4, C-5, C-6, C-7, and C-8 were proven. Therefore, Dr. Paden is ordered to pay a monetary penalty of \$1,000 payable by November 30, 2003, and his Arkansas pharmacist license is to be placed on probation for a period of one year. Dr. Rakab is ordered to pay a monetary penalty of \$1,000 payable by November 30, 2003, and her Arkansas pharmacist license is to be placed on probation for a period of one year. Walgreens Pharmacy #5993 is ordered to pay a monetary penalty of \$2,500 payable by November 30, 2003. Ms. Capps seconded the motion. The vote for the motion was unanimous.

Grey Chodzik, medical liaison for Purdue Pharma, appeared before the Board to tell them about a product called RxPatrol. He said their website is RxPatrol.org which is where you can fill out a DEA 106 Form. He said they collect data and provide free pattern analyses, and profiles of other pharmacy break-ins.

**G & G Medical, #G-00537** received an Order and Notice of Hearing. The allegations in this case are that the facility failed to renew its Supplier of Medical Equipment, Legend Devices, and/or Medical Gases permit and continued to operate without a license. Dr. Newsome called the meeting to order and turned the proceedings over to the Hearing Officer, Charlie Moulton. Tom Gay, of the Attorney General's Office, represented the Board staff – the respondent was not present.

Mr. Gay called Rusty McSpadden to testify. Dr. McSpadden told the Board that the Order and Notice of Hearing was sent to Shannon Gamewell by "Return Receipt Requested" through the United States Post Office. He also said that he asked if anyone was at the hearing to represent G & G Medical and he received no response. Dr. McSpadden testified regarding the licensing history of the facility and he said that the facility operated without a license from January 1, 2003 through May 1, 2003.

**BOARD ACTION:**

Ms. Capps made the motion that in the matter of G & G Medical, #G-00537 allegations A-1, A-2, A-3, and A-4 were found to be true and charges C-1 and C-2 were proven. Therefore G & G Medical's Supplier of Medical Equipment, Legend Devices, and/or Medical Gases permit is revoked effective immediately. Dr. Bowden seconded the motion. The vote for the motion was unanimous.

The Board instructed the Arkansas State Board of Pharmacy staff to notify Medicaid that G & G Medical's license was revoked.

**Mike Hogan, P.D., #6974; and Wal-Mart Pharmacy #10-0125, #AR-12673** appeared before the Board in answer to an Order and Notice of Hearing. The allegations in this case were that Dr. Hogan allowed a pharmacy technician to work in the pharmacy after her pharmacy technician license expired. Also, certain controlled drugs were missing from the inventory and a DEA Form 106 was not filed in the time frame required by Arkansas law. Dr. Newsome called the meeting to order and turned the proceedings over to the Hearing Officer, Charlie Moulton. Tom Gay, of the Attorney General's Office, represented the Board staff – the respondent was not represented by counsel. Bob Dufour, P.D., recused himself from this hearing.

Mr. Gay called Rusty McSpadden to testify regarding the licensing history of Mike Hogan and Wal-Mart Pharmacy. Dr. McSpadden said he talked to Eric Shoffner, pharmacy district manager, regarding the shortages in the pharmacy and about the pharmacy technician's status as a licensed technician. He said he was told that the technician admitted taking controlled substances from the pharmacy. He also said that Wal-Mart realized that there were shortages in the inventory in July; however, the Board did not receive the DEA Form 106 until September 2, 2003. Dr. McSpadden said Board regulation requires the DEA Form 106 to be submitted within seven days of realizing that there is a shortage.

Mike Hogan, P.D., testified regarding his technician registration procedure. He said he listed his technicians that needed to renew their licenses and he simply missed one. He told the Board that he has implemented a new system to make sure that this doesn't happen again. He also said that now he is going to have the technicians attach a copy of their registration to their name badge. Dr. Hogan told the Board that the DEA Form 106 is handled in Bentonville (Wal-Mart Corporate Office).

Jason Reiser told the Board that the DEA Form 106 is taken care of by Wal-Mart's Loss and Prevention Department. He said they have changed their procedures and the 106 Forms will be sent to the Arkansas State Board of Pharmacy within seven days.

**BOARD ACTION:**

Dr. Norris made the motion that in the matter of Mike Hogan, P.D., #6974; and Wal-Mart Pharmacy #10-0125, #AR-12673 allegations A-1, A-2, A-3, and A-4, were found to be true, and charges C-1, C-2, C-3, C-4, and C-5 were proven. Therefore, Dr. Hogan is ordered to pay a monetary penalty of \$500 payable by November 30, 2003, and his Arkansas pharmacist license is to be placed on probation for a period of one year for employing a pharmacy technician with an expired technician license. Wal-Mart Pharmacy #10-0125 is ordered to pay a monetary penalty of \$1,000 payable by November 30, 2003 for employing a pharmacy technician with an expired technician license and an additional monetary penalty of \$1,000 payable by November 30, 2003 for not filing the DEA Form 106 in a timely manner. Dr. McGinnis seconded the motion. The vote for the motion was unanimous.

Dr. Campbell told the Board that Walgreens requested a Consent Order when they received the Order and Notice of Hearing regarding the medication error and not counseling a patient. He asked the Board if a Consent Order should be offered when 1) a written complaint is received, 2) there has been a medication error, and 3) the patient has not been counseled. The Board said there may be case specific differences and that Dr. Gardner and Dr. Dufour should provide the staff with a proposal to handle these procedures before the February meeting of the Board.

Stephanie Gardner, Dean of the College of Pharmacy, and Trey Crumby, ASP Chapter President, appeared before the Board to request permission for the fourth-year pharmacy students to give immunizations on their rotations. Dean Gardner said the students complete their immunization training during the second semester of their third year of pharmacy school. Ms. Lincourt informed the Board that there are 97 Arkansas pharmacists authorized to immunize and only 22 of those are licensed preceptors. After much discussion, the Board decided to continue to study this matter to assure compliance with legislative intent.

William Yarbrough, Executive Vice President of Advance Pharmacy Solutions, appeared before the Board. Mr. Yarbrough told the Board that his company works primarily with indigent clients that have no resources to pay; however, they also work with Medicaid patients. Mr. Yarbrough said his company works with patients in the mental health area and/or in residential care. He said they are presently licensed in five other states and they are currently expanding. He told the Board that they have submitted an application to the Arkansas State Board of Pharmacy and are waiting on approval. The Board discussed Advance Pharmacy Solutions procedures with Mr. Yarbrough, and decided to table this issue until the next day.

**Wednesday, October 15, 2003**

The meeting was called to order by Lenora Newsome, P.D., President. Members present were Larry Autry, P.D.; Buddy Bowden, P.D.; Sharon Capps, RN; Bob Dufour, P.D.; Ross Holiman, B.S., H.Ed.; Larry McGinnis, Pharm.D.; and Ronnie Norris, P.D. Staff members present were Charles Campbell, Pharm.D., Executive Director; Trey Gardner, Pharm.D., Assistant Director;

Margaret Lincourt, Chief Fiscal Officer; Lana Broyles, Administrative Assistant; Ron Ewing, P.D.; Rusty McSpadden, P.D.; and Jim Myatt, P.D.

Dr. Campbell discussed the Wal-Mart hearing from the previous day with the Board members. He said that Wal-Mart is not the only chain pharmacy that does not submit the DEA 106 Form in a timely manner. He told the Board that this was a problem in the office, because it gives an employee time to leave one pharmacy and go to another one and divert drugs before the Board of Pharmacy is notified. He explained to the Board that they could expect to see more violations of this nature. Dr. Campbell asked the Board members if they would consider this particular violation as a consentable issue. The Board told Dr. Campbell that they took into consideration the length of time it took the pharmacy to submit the DEA 106 Form when they issued the fine. They did not consider this a consentable issue at this time.

Dr. Gardner presented a Consent Order for **Brookshire's Pharmacy #48, #AR-18132**. (Lenora Newsome, P.D., recused herself from this proceeding). The order was signed admitting to the charge that a \$15.00 gift card for grocery purchases was offered upon presentation of a new or transferred prescription to be filled at the pharmacy, which is a violation of Board Regulation. By signing the order, the respondent has agreed to pay a monetary penalty of \$1,000 within 30 days.

**BOARD ACTION:**

Dr. Autry made the motion to accept the Consent Order for Brookshire's Pharmacy #48, #AR-18132 as presented. Dr. Norris seconded the motion. The vote for the motion was unanimous.

Dr. Gardner presented a Consent Order for **Michelle Newton, pharmacy technician, #84740; Jack Burson, P.D., #5088; and Harp's Pharmacy #186, #AR-20303**. The charges in this case were that Dr. Burson, pharmacist in charge of Harp's Pharmacy #186, allowed pharmacy technician Michelle Newton to practice as a pharmacy technician without being permitted by the Board of Pharmacy. Each respondent signed the order agreeing to one year of probation for Michelle Newton, a monetary penalty of \$500 payable by December 15, 2003 for Dr. Burson, and a monetary penalty of \$1,000 payable by December 15, 2003 for Harp's Pharmacy #186.

**BOARD ACTION:**

Dr. Autry made the motion to accept the Consent Order for Michelle Newton, pharmacy technician, #84740; Jack Burson, P.D., #5088; and Harp's Pharmacy #186, #AR-20303, as presented. Mr. Holiman seconded the motion. The vote for the motion was unanimous.

Dr. Gardner presented an amended Consent Order for **Jill Rose, pharmacy technician, #82269; Angela Powell, P.D., #9115; and Baxter Regional Medical Center, #H-00031**. The charges in this case were that Dr. Powell, pharmacist in charge of Baxter Regional Medical Center, allowed pharmacy technician Jill Rose to practice as a pharmacy technician without being permitted by the Board of Pharmacy. Each respondent signed the order agreeing to one year of probation for

Jill Rose, a monetary penalty of \$500 payable by December 15, 2003 for Dr. Powell, and a monetary penalty of \$1,000 payable by December 15, 2003 for Baxter Regional Medical Center.

**BOARD ACTION:**

Mr. Holiman made the motion to accept the Consent Order for Jill Rose, pharmacy technician, #82269; Angela Powell, P.D., #9115; and Baxter Regional Medical Center, #H-00031, as presented. Dr. Autry seconded the motion. The vote for the motion was unanimous.

Dr. Gardner presented a Consent Order for **Zimmerman's Nursing Home, #N-00781**. The order was signed admitting to the charge that the home did not renew their nursing home consultant permit within the appropriate time interval. By signing the order, the nursing home has agreed to pay a \$500 fine by December 15, 2003.

**BOARD ACTION:**

Dr. Norris made the motion to accept the Consent Order for Zimmerman's Nursing Home, #N-00781 as presented. Dr. McGinnis seconded the motion. The vote for the motion was unanimous.

Dr. Gardner presented a Consent Order for **Healthway, Inc., #G-00538**. The owner of the company signed the order admitting to the charge that his company did not renew their home medical equipment supplier permit on time. By signing the order, the company has agreed to pay a \$1,000 fine by August 15, 2003.

**BOARD ACTION:**

Dr. Autry made the motion to accept the Consent Order for Healthway, Inc., #G-00538 as presented. Dr. Newsome seconded the motion. The vote for the motion was unanimous.

Dr. Gardner presented a Consent Order for **Pines Nursing and Rehab Center, #N-01180** and **Michael Wood, P.D., #5551**. The order was signed admitting to the charge that the home did not renew their nursing home consultant permit within the appropriate time interval. By signing the order, the nursing home has agreed to pay a \$500 fine by August 15, 2003.

**BOARD ACTION:**

Dr. McGinnis made the motion to accept the Consent Order for Pines Nursing and Rehab Center, #N-01180 and Michael Wood, P.D., #5551 as presented. Dr. Bowden seconded the motion. The vote for the motion was unanimous.

Dr. Gardner presented a Consent Order for **True Home Care, #G-00533**. The owner of the company signed the order admitting to the charge that his company did not renew their home medical equipment supplier permit on time. By signing the order, the company has agreed to pay a \$1,000 fine by August 15, 2003.



**BOARD ACTION:**

Dr. Bowden made the motion to accept the Consent Order for True Home Care, #G-00533 as presented. Dr. Norris seconded the motion. The vote for the motion was unanimous.

Dr. Gardner presented a Consent Order for **Pulaski County Detention Facility, #I-01081** and **Mark Zilner, P.D., #9592**. The order was signed admitting to the charge that the facility did not renew their institutional pharmaceutical services permit within the appropriate time interval. By signing the order, the nursing home has agreed to pay a \$500 within 30 days.

**BOARD ACTION:**

Dr. Autry made the motion to accept the Consent Order for Pulaski County Detention Facility, #I-01081 and Mark Zilner, P.D., #9592 as presented. Dr. Bowden seconded the motion. The vote for the motion was unanimous.

Dr. Gardner presented the Board with an Agreed Temporary Order for **Julia Mills, P.D., #8375**. Dr. Mills signed the order, and agreed not to practice as an Arkansas pharmacist or be physically present in the prescription department of a pharmacy until she appears before the Board or agrees to a Consent Order.

**BOARD ACTION:**

Dr. Norris made the motion to accept the Agreed Temporary Order for Julia Mills, P.D., #8375 as presented. Dr. Autry seconded the motion. The vote for the motion was unanimous.

Dr. Gardner presented an Agreed Temporary Order for pharmacy technician **Michelle Hoffman, #85840**. Ms. Hoffman signed the order and agreed not to practice as a pharmacy technician in Arkansas or be physically present in the prescription department of a pharmacy until approved by the Board.

**BOARD ACTION:**

Dr. Autry made the motion to accept the Agreed Temporary Order for pharmacy technician Michelle Hoffman, #85840 as presented. Mr. Holiman seconded the motion. The vote for the motion was unanimous.

Dr. Gardner presented an Agreed Temporary Order for pharmacy technician **Jennifer Martin, #87326**. Ms. Martin signed the order and agreed not to practice as a pharmacy technician in Arkansas or be physically present in the prescription department of a pharmacy until approved by the Board.

**BOARD ACTION:**

Dr. Norris made the motion to accept the Agreed Temporary Order for pharmacy technician Jennifer Martin, #87326 as presented. Mr. Holiman seconded the motion. The vote for the motion was unanimous.

Dr. Gardner presented a signed Affidavit of Surrender for pharmacy technician **Jonathan Tygart, #85189**. Mr. Tygart has admitted to stealing controlled substances from a pharmacy at which he was employed for his own personal use. Dr. Gardner said that for all intents and purposes, this is a revocation.

**BOARD ACTION:**

Dr. Norris made the motion to accept the Affidavit of Surrender for pharmacy technician Jonathan Tygart, #85189 as presented. Dr. Autry seconded the motion. The vote for the motion was unanimous.

Dr. Gardner presented a signed Affidavit of Surrender for pharmacy technician **Kelly Johnson, #83239**. Ms. Johnson has admitted to stealing two prescriptions that had been filled upon prescription order for patients who are relatives of a friend. Dr. Gardner said that for all intents and purposes, this is a revocation.

**BOARD ACTION:**

Dr. Norris made the motion to accept the Affidavit of Surrender for pharmacy technician Kelly Johnson, #83239 as presented. Mr. Holiman seconded the motion. The vote for the motion was unanimous.

Dr. Campbell informed the Board that he received a complaint from the Medical Board involving a physician in Hot Springs wanting a physician's dispensing license. The physician said that the local pharmacies were not honoring first time workman's compensation claims. Dr. Campbell said that Jim Myatt investigated the complaint and his investigation did not show a pattern. The Board maintained its position that so long as there are pharmacies in an area that can service patients, there is no need for physicians to obtain a dispensing permit.

Dr. Campbell discussed Act 1653 of 2001 with the Board members. He told the Board that any action the Board takes on a license becomes part of the public record. He reminded the Board that in the past, the Board chose to disclose this information in Arkansas State Board of Pharmacy publications, however actual names and license numbers were not used. Act 1653 of 2001 requires the Findings of Fact of any hearing be published on the Board's website. Dr. Campbell explained that the agency's current software is not equipped to comply with this Act. He also told the Board that the software is outdated and is not equipped to handle the number of licensees the agency now has. Dr. Campbell told the Board that Ms. Lincourt has been working with other agencies that are faced with this problem.

Ms. Lincourt explained to the Board that the system needed to be updated and she said it would be expensive. She said she would have to go before the Peer Committee to ask for additional appropriation. She told the Board that the Board of Nursing, the Real Estate Commission, and the Cosmetology Board were all looking at the same software package. They would probably go before the committee as a group.

**BOARD ACTION:**

Dr. Autry made the motion that Ms. Lincourt should move forward with the software conversion. Ms. Capps seconded the motion. The vote for the motion was unanimous.

Ron Ewing presented the Board with a charitable clinic application from **Conway County Christian Clinic – Morrilton, Arkansas**. He said that it was a straightforward charitable clinic application in a secure location. He explained that everyone associated with clinic were volunteers and that no fee would be charged for services.

**BOARD ACTION:**

Dr. Autry made the motion to approve the charitable clinic application for Conway County Christian Clinic as presented. Ms. Capps seconded the motion. The vote for the motion was unanimous.

**BOARD ACTION:**

Ms. Capps made the motion to approve the following list of ACPE Colleges of Pharmacy that Arkansas will accept for licensure by reciprocity or examination:

- ◆ Auburn University Harrison School of Pharmacy
- ◆ Samford University McWhorter School of Pharmacy
- ◆ Midwestern University College of Pharmacy-Glendale Campus
- ◆ University of Arizona College of Pharmacy
- ◆ University of Arkansas for Medical Sciences College of Pharmacy
- ◆ Thomas J. Long School of Pharmacy and Health Sciences at the University of the Pacific
- ◆ University of California San Francisco School of Pharmacy
- ◆ University of Southern California School of Pharmacy
- ◆ Western University of Health Sciences College of Pharmacy
- ◆ University of Colorado Health Sciences Center School of Pharmacy
- ◆ University of Connecticut School of Pharmacy
- ◆ Howard University School of Pharmacy
- ◆ Florida Agricultural and Mechanical University College of Pharmacy and Pharmaceutical Sciences
- ◆ Nova Southeastern University College of Pharmacy
- ◆ Palm Beach Atlantic University School of Pharmacy
- ◆ University of Florida College of Pharmacy
- ◆ Mercer University Southern School of Pharmacy
- ◆ South University School of Pharmacy
- ◆ University of Georgia College of Pharmacy
- ◆ Idaho State University College of Pharmacy
- ◆ Midwestern University Chicago College of Pharmacy
- ◆ University of Illinois at Chicago College of Pharmacy
- ◆ Butler University College of Pharmacy and Health Sciences
- ◆ Purdue University School of Pharmacy and Pharmaceutical Sciences
- ◆ Drake University College of Pharmacy and Health Sciences
- ◆ University of Iowa College of Pharmacy
- ◆ University of Kansas School of Pharmacy
- ◆ University of Kentucky College of Pharmacy
- ◆ University of Louisiana at Monroe College of Pharmacy
- ◆ Xavier University of Louisiana College of Pharmacy

- ◆ University of Maryland School of Pharmacy
- ◆ Massachusetts College of Pharmacy and Health Sciences –Boston Campus
- ◆ Massachusetts College of Pharmacy and Health Sciences School of Pharmacy-Worcester
- ◆ Northeastern University School of Pharmacy
- ◆ Ferris State University College of Pharmacy
- ◆ University of Michigan College of Pharmacy
- ◆ Wayne State University, Eugene Applebaum College of Pharmacy and Health Sciences
- ◆ University of Minnesota College of Pharmacy
- ◆ University of Mississippi School of Pharmacy
- ◆ St. Louis College of Pharmacy
- ◆ University of Missouri-Kansas City School of Pharmacy
- ◆ University of Montana School of Pharmacy and Allied Health Sciences
- ◆ Creighton University School of Pharmacy and Allied Health Professions
- ◆ University of Nebraska Medical Center College of Pharmacy
- ◆ Nevada College of Pharmacy
- ◆ Rutgers, the State University of New Jersey Ernest Mario School of Pharmacy
- ◆ University of New Mexico College of Pharmacy
- ◆ Albany College of Pharmacy
- ◆ Long Island University, Arnold and Marie Schwartz College of Pharmacy and Health Sciences
- ◆ St. John's University College of Pharmacy and Allied Health Professions
- ◆ University at Buffalo SUNY School of Pharmacy and Pharmaceutical Sciences
- ◆ Campbell University School of Pharmacy
- ◆ University of North Carolina at Chapel Hill School of Pharmacy
- ◆ North Dakota State University College of Pharmacy
- ◆ Ohio Northern University College of Pharmacy
- ◆ Ohio State University College of Pharmacy
- ◆ University of Cincinnati College of Pharmacy
- ◆ University of Toledo College of Pharmacy
- ◆ Southwestern Oklahoma State University School of Pharmacy
- ◆ University of Oklahoma College of Pharmacy
- ◆ Oregon State University College of Pharmacy
- ◆ Mylan School of Pharmacy
- ◆ Lake Erie College of Osteopathic Medicine School of Pharmacy
- ◆ Nesbitt School of Pharmacy at Wilkes University
- ◆ Temple University School of Pharmacy
- ◆ University of Pittsburgh School of Pharmacy
- ◆ University of the Sciences in Philadelphia, Philadelphia College of Pharmacy
- ◆ University of Puerto Rico Medical Sciences Campus School of Pharmacy
- ◆ University of Rhode Island College of Pharmacy
- ◆ Medical University of South Carolina College of Pharmacy
- ◆ University of South Carolina College of Pharmacy
- ◆ South Dakota State University College of Pharmacy
- ◆ University of Tennessee Memphis College of Pharmacy
- ◆ Texas Southern University College of Pharmacy and Health Sciences
- ◆ Texas Tech University Health Sciences Center School of Pharmacy
- ◆ University of Houston College of Pharmacy
- ◆ The University of Texas at Austin College of Pharmacy
- ◆ University of Utah College of Pharmacy
- ◆ Hampton University School of Pharmacy
- ◆ Shenandoah University Bernard J. Dunn School of Pharmacy
- ◆ Virginia Commonwealth University at the Medical College of Virginia Campus School of Pharmacy

- ◆ University of Washington School of Pharmacy
- ◆ Washington State University College of Pharmacy
- ◆ West Virginia University School of Pharmacy
- ◆ University of Wisconsin-Madison School of Pharmacy
- ◆ University of Wyoming School of Pharmacy
- ◆ Lebanese American University School of Pharmacy

Dr. Norris seconded the motion. The vote for the motion was unanimous.

Ms. Lincourt reminded the Board that at the June 2003 Board meeting they discussed including the nursing home consultant in charge in consent orders for nursing homes that do not renew their nursing home consultant permits within the appropriate time frame. She told the Board that the next time renewal applications are sent to the nursing home, a separate notification will be sent to each nursing home consultant that lists all the homes that are permitted under his/her name.

Dr. Campbell informed the Board that the Arkansas Pharmacy Jurisprudence Examination needs to be re-evaluated. He told them that when the law exam was administered to the third year pharmacy students last June there was a 100 percent pass rate. He said that there has been a rumor that a copy of the examination has been circulated throughout the College of Pharmacy. Dr. Campbell informed the Board that Arkansas is one of the three states that do not participate in the National Association of Boards of Pharmacy's Multi-state Pharmaceutical Jurisprudence Examination (MPJE). He asked the Board if they wanted to rewrite the examination or move towards the MPJE.

#### **BOARD ACTION:**

Dr. Dufour made the motion to create a committee, which he would chair, consisting of Board of Pharmacy staff, and others to come up with a test and to look at options pertaining to the Sylvan Learning Centers. Dr. Bowden seconded the motion. The vote for the motion was unanimous.

Dr. Campbell introduced Bubba Arnold, pharmacy director at St. Vincent's Hospital, to the Board and asked him to share the hospital's plan to incentivize employees to use the hospital pharmacy. Dr. Arnold explained that St. Vincent's is self-insured through Qual-Choice and it plans to re-open the employee pharmacy to realize significant savings in its drug benefit program for employee/dependent prescription drugs. It will discount prescriptions filled in the hospital pharmacy but will allow employees to go elsewhere if they prefer. Dr. Campbell distributed a list of state facilities that could, and probably would, decide to implement similar programs. This could have a significant impact on retail pharmacies and perhaps, threaten the existence of some. In this regard, there may be an impact on the public health. The federal Robinson-Patman Act allows for institutions to provide prescription drugs to their employees and dependents. There is a real question about whether this affects a patient's freedom of choice and, in the face of this kind of incentivizing, is freedom of choice enforceable. The Board supports the position of institutions that want to use closed and/or preferred networks. Laura Sholes of Blanford Pharmacy addressed the board and said that St. Vincent's plan would have a significant effect on her families 20-year business providing prescriptions for employees of St. Vincent's Hospital.

She asked about the differential pricing provided to hospitals by drug manufacturers and Dr. Dufour provided information on that practice. Mark Riley, Executive Vice President of the Arkansas Pharmacists' Association said that pharmacists have worked very hard to accommodate patients. In the current environment, Robinson-Patman is flawed and he felt that a movement by institutions to use closed or preferred networks will result in a severe effect on community pharmacy and drive a wedge between community and hospital pharmacy. Dr. Campbell said that there is a difference between incentivizing and mandating employee prescription purchasing choices but that he expected institutions would eventually mandate the use of hospital pharmacies because of the significant savings involved. He would like to see a clearer definition of "freedom of choice." The Board had no objection to St. Vincent's plan and thanked Dr. Arnold for providing information to the Board.

Dr. Gardner asked the Board for clarification on the proper license for Student Health Clinics. There are currently two Student Health Clinics in Arkansas licensed as institutional pharmacies. The clinics are at the University of Arkansas and at Arkansas State University. The clinics do not fit the requirements of an institutional permit because they do not have inpatients, but they were given that permit when they applied because it was the closest fit. Dr. Gardner asked the Board if they would like to leave the clinics under the institutional permit, or have his committee create a specialty Pharmacy Permit for Student Health Clinics.

**BOARD ACTION:**

Dr. Autry made the motion that the committee write language to create a specialty pharmacy permit for Student Health Clinics on University campuses and present it for approval at the next Board meeting. Dr. Norris seconded the motion. The motion passed with Dr. McGinnis abstaining.

**Jonathan Ragan, P.D. # 7823** appeared before the Board with a representative of the Arkansas Pharmacy Support Group, to request his Agreed Order be converted to a Consent Order. Dr. Ragan has become a landscape contractor and he has developed a successful business that he truly enjoys. He would like to be able to work as a pharmacist in the future if, and when, he gets tired of the landscaping business. Kim Light, Ph.D., from the Support Group spoke on behalf of Dr. Ragan and said that he had complied with all of their requirements and that the support group advocated the conversion.

**BOARD ACTION:**

Dr. McGinnis made the motion to accept the conversion from an Agreed Order to a Consent Order for **Jonathan Ragan, P.D., # 7823** as presented. Dr. Norris seconded the motion. The vote for the motion was unanimous.

**Barry Napier, P.D. # 7085** appeared before the Board with a representative of the Arkansas Pharmacy Support Group, to request his Agreed Order be converted to a Consent Order. Dr. Napier stated that in the past he had gone back to work too soon and was not really ready for it. However, he has now undergone residential treatment and realized the extent of his problem. He felt that he had worked very hard to overcome his addiction. He thought he was ready to work and that he would only work if his employers and co-workers knew of his situation. He had been

offered a position, pending the outcome of his request, and he feels that he would be able to work successfully in this environment. Kim Light, Ph.D., from the Support Group, spoke on behalf of Dr. Napier and said the group advocates for the conversion for Dr. Napier.

**BOARD ACTION:**

Dr. Autry made the motion to accept the conversion from an Agreed Order to a Consent Order for **Barry Napier, P.D., # 7085** as presented. Mr. Holiman seconded the motion. The vote for the motion was unanimous.

A Public Hearing on Regulations 3, 11, 2, 4 and 8 was called to order at 1:50 P.M.

**Regulation 3 – Pharmacy Technicians**

Dr. Gardner presented the regulation. The proposed regulation clarified the tasks, duties and responsibilities of pharmacy technicians and provided the requirement for criminal background checks for applicants for pharmacy technician registration. Dr. Gardner asked if anyone wished to speak for or against the amendments. Jason Hawkins spoke in favor of the regulation. Ms. Lincourt said that the criminal background checks applied only to new applicants.

**BOARD ACTION:**

Dr. McGinnis made the motion to approve the amendment to Regulation 3 as presented. Mr. Holiman seconded the motion. The vote for the motion was unanimous.

**Regulation 11 – Criminal Background Checks**

Dr. Gardner presented Regulation 11. The regulation provides rules and regulations for processing criminal background checks for applicants for a pharmacist or an intern license, or for applicants for a pharmacy technician registration. Dr. Gardner asked for public comment. There were no public comments. Tom Gay asked that we make three (3) non-substantive changes to the regulations as printed.

**BOARD ACTION:**

Dr. McGinnis made the motion to approve Regulation 11 as presented. Dr. Norris seconded the motion. The vote for the motion was unanimous.

Tom Gay said that he had just been made aware that on-line background checks may be available soon. We will bring this regulation back to the Board in February to allow for this expedited process, before the regulation goes into effect in March 2004.

**Regulation 02-01-0001 to 02-03-0001– Pharmacists**

Dr. Gardner presented Regulation 2. The purpose of the amendment was to establish the requirement of completing criminal background checks for applicants for a pharmacist or intern license. Dr. Gardner asked for public comment. There were no public comments.

**BOARD ACTION:**

Dr. McGinnis made the motion to approve the amendment to Regulation 2 as presented. Dr. Norris seconded the motion. The vote for the motion was unanimous.

**Regulation 4 – Pharmacies**

Dr. Gardner presented Regulation 4. The amendments to the regulation required Board-approved forms for applications, and added the term, “buprenorphine” to the methadone clinic regulations. He asked for public comment. There were no public comments.

**BOARD ACTION:**

Mr. Holiman made the motion to approve the amendment to Regulation 4 as presented. Dr. Autry seconded the motion. The vote for the motion was unanimous.

**Regulation 04-02-0011 – Central Fill Pharmacy**

Dr. Gardner presented Regulation 4. He wanted to acknowledge the help of Sarah Drewery, a fourth-year rotation student, in drafting the language of the regulation. The amendments to the regulation added a new section on Central Fill Pharmacy to the regulation. He asked for public comment. There were no public comments.

**BOARD ACTION:**

Dr. Norris made the motion to approve the amendment to Regulation 04-02-0011 as presented. Mr. Holiman seconded the motion. The vote for the motion was unanimous.

**Regulation 8 – Wholesale Distributors of List I Chemicals**

Dr. Gardner presented Regulation 8. The amendments to the regulation provide disciplinary actions for violators of this regulation. The amendments also adds to the minimum requirements that wholesale distributors have a DEA license. Dr. Gardner asked for public comment. There were no public comments. Dr. Gardner stated that we have been inspecting List I Chemical facilities.

**BOARD ACTION:**

Dr. Autry made the motion to approve the amendment to Regulation 8 as presented. Mr. Holiman seconded the motion. The vote for the motion was unanimous.

The public hearing ended at 2:15 P.M.

Tom Gay updated the Board on the IVESCO case. He said that IVESCO would like to settle the case. They asked to present an offer at the next Board meeting in February 2004. The Order has been staid pending their appeal. The Board asked what our options were in this case and were advised that they can wait for an offer of settlement and evaluate it. If they choose not to accept the offer, they can pursue it in court. IVESCO will be on the agenda for the February meeting.

Dr. Campbell discussed the use of committees to hear cases. He asked for clarification: can we use committees for hearings? Tom Gay said that we may need to do an emergency regulation change. He will research it. In the meantime, we may be able to do it on a voluntary basis. Dr. Campbell said that the staff will try to put a procedure in place before the next meeting and solicit participation of a couple of members of the Board if Tom Gay determines it is possible. If it is not possible, we will continue with the usual format in February 2004.



Dr. Campbell presented the results of a survey of the Boards of Pharmacy with respect to the 40-hour requirement. He said that the Board needs to consider the 40-hour work rule. A discussion followed. Dr. Norris explained that the requirement was the result of Dr. Hosto's interest in discouraging part-time pharmacies all over the state that would not be in the interest of the public health. Dr. Autry suggested that the Board will not be able to enforce this requirement in small towns throughout the state. Dr. Campbell said that the Board should think about this subject before the next meeting. Changes to this requirement may need statutory changes and Tom Gay will research it. Dr. McGinniss said that there is currently an exemption to the pharmacist in charge in small hospitals. Dr. Gardner said that the exemption is based on the number of beds. Dr. Dufour said that we need to consistently enforce any changes to this regulation and deal with vacations, illness, military leave, and other such issues in all pharmacies throughout the state. Dr. Autry said that we might explore other changes that would have the effect of providing quality pharmacy services in small towns but not rely on a 40-hour per week requirement for the pharmacist in charge. Dr. Campbell said that at the current time we do not have a policy on maternity leave or vacation in small pharmacies but it is understood that the pharmacist in charge is responsible for the pharmacy even when the pharmacist is not present.

Dr. Campbell said that technician diversion continues to be an issue. At this time, we do not pursue technicians who have admitted to diverting drugs. He asked the Board to consider taking additional action to discourage technicians. Dr. Autry thought we should also consider taking action against pharmacists who allow this to happen by lack of oversight. Some of the problem may be reduced by technician licensing requirements (background checks.) Dr. Dufour asked if the Attorney General's Office could pursue these technicians. He felt that we could not punish pharmacists who are trying to root out the problem. He said that national statistics show that one in every twelve stores has a diversion problem. Dr. Campbell said that the Board usually learns of diversion when the technicians are picked up by the police. Dr. Dufour said that stores with multiple pharmacists do not have a good overall picture of the drug use in the store. He said that it is difficult to prosecute these cases. To get a conviction, you must do perpetual inventory for 4 or 5 days. Dr. Dufour spoke in favor of the Board prosecuting technicians. Tom Gay said that we may be able to refer cases to a prosecutor.

Dr. Gardner asked about the statutory requirement to provide free law books and revisions to licensed pharmacies. Dr. Myatt said that most pharmacies had law books that date back to 1999. Since regulations change at every meeting, this would be extremely costly. The Board agreed that we met the requirements by providing the law book online – we do not need to provide "hard copies."

Dr. Gardner asked the Board for clarification on Regulation 02-01-0004 (d) that says a preceptor may supervise only one intern. Could a pharmacy hire more than one intern, as long as they only supervised one at a time? Ms. Lincourt said that preceptors currently may supervise an intern, an intern in rotation, two pharmacy technicians, and a graduate student. She also said that we would have no way of tracking student experience hours with our current software and staff resources. It would be extremely confusing to the preceptors and interns. Dr. Campbell agreed that it would be too confusing to allow preceptors to have more than one intern. However, if Dr. Gardner could come up with a process to administratively track intern hours, Dr. Campbell

would be happy to consider the proposal. The Board discussed the issue and asked staff to work out the details. No action was taken.

Ms. Lincourt asked if the Board would consider changing Regulation 8 to provide for the sale of Wholesale Distributors of Legend Devices, Medical Equipment and Medical Gases. There is statutory authority to do this but the regulation is silent on it. The change would make it consistent with other Wholesale Distributor Licenses. The Board agreed to consider this change at the February, 2004 meeting.

Ms. Lincourt asked if the Board wished to provide for the purchase of mailing lists on the website. The Board felt that pharmacists would be inundated with unwanted mail and they did not want to do that.

Dr. Gardner asked how the Board wanted to treat the application for licensure for Advance Pharmacy Solutions. The Board indicated that they would like additional information regarding the status of the applicant's Colorado license. If there were no issues in other states, the license should be approved.

The meeting was adjourned.

Prepared By:

Approved for the board:

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Lana Broyles

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Lenora Newsome, P.D., President